

08-11-2004

Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0027 (exp. 6/30/20)



U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

R
102811564
TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

8.6.04

1. Name of conveying party(ies)/Execution Date(s):

IVC Industries, Inc.
500 Halls Mill Road
Freehold, New Jersey 07728

- Individual(s)
- General Partnership
- Corporation-State New Jersey
- Other
- Association
- Limited Partnership

Citizenship (see guidelines)

Execution Date(s) July 6, 2004

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: T.J.R. McDowell LLC

Internal

Address:

Street Address: Angel Hill, 923 14th Street

City: Pacific Grove

State: California

Country: Zip: 93950

- Association Citizenship
- General Partnership Citizenship
- Limited Partnership Citizenship
- Corporation Citizenship California
- Other Citizenship

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2,125,894

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

PINE BROS.

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: Jean M. Maxwell
Trademark Paralegal/Admin.

Internal Address:
Inverness Medical Innovations
Street Address: 51 Sawyer Rd., Suite 200

City: Waltham,

State: MA Zip: 02453-3448

Phone Number: 781 314-4062

Fax Number: 781-647-3939

Email Address: Jean.Maxwell@invmed.com

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$40.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers Expiration Date

b. Deposit Account Number 502672

Authorized User Name Jean M. Maxwell

9. Signature: Jean M. Maxwell
Signature

August 4, 2004

Date

Jean M. Maxwell

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 6

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to: Trademark Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

08/10/2004 DBYRNE

00000107 502672

01 FC:0521

40.00 DA

TRADEMARK
REEL: 003024 FRAME: 0220

AGREEMENT AND ASSIGNMENT

This Agreement and Assignment ("Agreement"), effective as of the latest date set forth below, is by and between IVC Industries, Inc., a New Jersey corporation with an address at 500 Halls Mill Road, Freehold, New Jersey 07728 ("IVC") and T.J.R. McDowell LLC, a CA corporation with an address at Angel Hill 923, 14th Street, Pacific Grove, CA 93950 ("TJRM").

FACTUAL BACKGROUND

IVC is the owner of US Trademark Registration No. 2125894 in International Class 5, filed on March 7, 1994. TJRM is interested in acquiring all of IVC's right, title, and interest in and to the mark PINE BROS (the "Mark") as well as IVC's aforementioned U.S. Trademark Registration No. 2125894, and IVC is willing to convey such rights to TJRM pursuant to the terms and conditions set forth in this Agreement.

TERMS AND CONDITIONS

1. In consideration of the sum of U.S. \$150,000 to be paid to IVC by TJRM, in the manner hereinafter set forth, IVC hereby transfers and assigns to TJRM all of its right, title and interest in and to the Mark.

2. Within ^{30 days} ~~seven (7)~~ days of its receipt of a fully-executed counterpart of this Agreement, TJRM shall pay IVC the sum of U.S. \$150,000 in consideration of the aforesaid assignment.

3. IVC agrees that upon receipt of payment, it shall no longer sell or distribute any products, packaging, advertising or other materials bearing the Mark.

4. IVC hereby consents to, and shall not oppose, seek to cancel, challenge or otherwise interfere with TJRM's use and registration of the Mark, whether as one word

or two words, and shall, upon request, provide TJRM with further written consents to the registration of the Mark.

5. IVC represents that it has no registrations or applications for registration (whether U.S. or foreign) of marks consisting of or containing the term PINE BROS other than the aforementioned U.S. Trademark Registration No. 2125894.

6. Except for and subject to the terms, covenants and obligations contained in this Agreement, IVC on the one hand, and TJRM, on the other hand, hereby release and discharge each other, their respective affiliates, partners, officers, directors, stockholders, agents, privies, employees, managers, attorneys, accountants, heirs, executors, administrators, personal representatives, successors and assigns from any claim, cause or right of action, liability or obligation of any kind, type or nature, whether currently known or unknown, which each or any of them now has or may have against the other arising out of or in connection with their respective uses of the Mark. This mutual release does not serve to release any party from any of the terms, covenants and obligations contained in this Agreement.

7. Notwithstanding the foregoing, IVC hereby represents and warrants that to the best of its knowledge as of the date of this Assignment 1) the Mark is currently in good standing with the United States Patent and Trademark Office, 2) the Mark has one existing lien-holder, whose lien will be fully satisfied upon receipt of the payment as defined above, and 3) IVC knows of no claims of any kind, including without limitation infringement, with regard to the Mark. IVC indemnifies TJRM for any claims or damages (including costs and attorneys' fees) in the event that a third party adjudicator finally determines that IVC is in breach of the warranties set forth herein. Except as set

forth above, TJRM indemnifies IVC for any and all claims and damages (including costs and attorneys' fees) of any kind relating to the Mark, and asserted against either party on or after the date of this Assignment.

7. This Agreement, and all terms, covenants and obligations thereof, shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective officers, directors, stockholders, agents, employees, servants, predecessors, successors, assigns, affiliates, heirs, personal representatives, and all other persons, firms, companies, associates, or partnerships claiming through any of them.

8. All parties shall bear their own legal expenses and costs with respect to their fulfillment of the covenants and obligations contained in this Agreement.

9. This Agreement is a fully integrated document, containing the entire understanding between the parties, and supersedes and integrates any prior understandings or written or oral agreements between the parties respecting the subject matter hereof. The parties to this agreement are not relying on any representations other than those contained herein. The parties to this Agreement, and each of them, agree and warrant that this Agreement is the result of negotiations between parties experienced in business and financial affairs who have equal access to the information concerning this transaction. The parties to this Agreement, and each of them, agree and warrant that the terms and conditions of this Agreement are fair and enforceable. The parties further agree and warrant that they have obtained legal advice concerning the meaning and effect of this Agreement and that they have had sufficient time to consider the meaning and effect of this Agreement.

10. There shall be no amendments or modifications to this Agreement unless any such amendments or modification are in writing and signed by both parties to this Agreement. Any alleged or purported amendment or modification shall be void and unenforceable unless it is in writing and signed by both parties to this Agreement. This provision concerning amendments or modifications cannot be waived or otherwise rendered unenforceable except by a written document signed by both parties to this Agreement.

11. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original an against any party whose signature appears below and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually, or taken together, shall bear the signatures of both the parties reflected hereon as the signatories.

13. All notices, payments and other written communications relating to this Agreement shall be in writing and shall be deemed to be fully given and received if sent by Federal Express or registered mail, postage prepaid, to the representative parties' attorneys at the following addresses:

to IVC:

General Counsel
IVC Industries, c/o Inverness Medical
51 Sawyer Road
Waltham, MA 02478

to TJRM:

Angel Hill
923 14th St.
[Fill in] _____ *Pacific Grove, CA*
93950

If sent by registered mail, the notice shall also be sent by facsimile. Either party hereto may change its address for the purposes of this Agreement by giving the other party written notice of its new address.

WHEREFORE, the parties hereto have caused by this Agreement to be executed as a document under seal.

IVC INDUSTRIES, INC.

By: *AJ Bernard*
Name: Anthony J. Bernardo
Title: VP
Date: 6/30/04

T.J.R. McDowell LLC

By: *TJR McDowell*
Name: T.J. Rider McDowell
Title: OWNER
Date: 7/6/04